IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 1ST NOVEMBER 2007 / 10TH KARTHIKA 1929

OP.No. 32142 of 1999(B)

PETITIONER:

K.T.JOB, KOCHUKUNEL HOUSE,
VIRUPAKA, VAZHANI,
THRISSURE 680 589.

BY ADV. SRI.P.RAMAKRISHNAN
SRI.C.ANIL KUMAR

RESPONDENTS:
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1. **INDUSTRIAL TRIBUNAL, PALAKKAD.**

2. **THE MANAGER, TRICHUR CO-OPERATIVE SPINNING MILLS LIMITED NO.(ST) 7 VAZHANI P.O., THRISSUR.**

BY ADV. SRI.K.ANAND (A.201)

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 01/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.No.54602/1999 IN O.P.NO.32142/1999

DISMISSED.

1.11.2007 **Sd/- S.SIRI JAGAN, JUDGE**

APPENDIX

PETITIONRS EXHIBITS:

EXT.P1: AWARD PASSED BY THE 1ST RESPONDENT IN I.D.NO.13/94 DATED 19.02.1996.

TRUE COPY

P.A.TO JUDGE

S.SIRI JAGAN,J

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O.P.No.32142 of 1999

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Dated this the 1st day of November, 2007

JUDGMENT

Workman involved in I.D.No.13/1994 before the industrial Tribunal, Palakkad is the petitioner herein. He is challenging Ext.P1 award passed by the Tribunal in that I.D. The issue referred for adjudication was " retrenchment of Sri.K.T.Job, Part-Time Pumb Operator". The dispute arose in the following circumstances.

2. The petitioner was appointed as a part-time pump operator in the establishment of the management in 1986. On 24.03.1989 the petitioner was given a notice of retrenchment. On 07.04.1989 he was retrenched from service with effect from 12.04.1989. The petitioner filed a complaint before the Labour Officer on 17.04.1989. On 24.04.1989 the management withdrew the order of retrenchment and allowed him to join as a trainee. Later, on 30.05.1989 a notice was issued proposing to retrench the workman with effect from 09.09.1989 subject to permission to be obtained from the Government under Section

25N of the Industrial Disputes Act. On 03.07.1989 the Government refused to grant permission for retrenchment and directed grant of alternate employment to the workman. However, the management, by letter dated 10.07.1989, directed the petitioner report as a trainee. Petitioner was not willing to accept the same. On 01.09.1989 the Government held that this is against the spirit of the earlier order and therefore directed the management to employ the petitioner. Thereafter, the management moved the Government for a review of the earlier order, under Rule 25N (6) of the Industrial Disputes Act. The same was allowed and permission was granted to retrench the workman. Thereafter, the management issued a notice dated 16.10.1989 for retrenchment of the workman on 1.12.1989 he was retrenched from service. The petitioner raised an industrial dispute which culminated in Ext.P1 award. By Ext.P1 award the Tribunal came to the conclusion that the retrenchment was proper and valid. That award is under challenge before me.

3. The contention of the workman is that after the Government granted permission for retrenchment the second time, the management ought to have issued a fresh notice and offered retrenchment compensation as provided under Section

25N again, without which the retrenchment would be illegal.

4. The learned counsel for the management would submit that the order under Section 25N (6) is only a continuation of the earlier proceedings initiated by the management by filing an application for permission in which the earlier order was passed. Therefore, there is no requirement of repeating the very same procedure for completing the retrenchment process. On that submission, the counsel would argued for sustaining Ext.P1 award.

5. I have considered the rival contentions in detail. As I have already stated the only contention raised before me by the petitioner/workman is that after the approval granted by the Government, it was mandatory on the part of the management to give a fresh notice and retrenchment compensation as contemplated in sub-section 1 of Section 25N, without which the retrenchment would be against the spirit of Section 25N. I am unable to agree with the contentions of the learned counsel for the petitioner. Section 25N reads thus:

> **"25N. Conditions precedent to retrenchment of workmen:-** (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

(a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette(hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

(2)An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where an application for permission has been made under sub-section (1) and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(5) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-section(6), be final and binding on all the parties concerned and shall remain in force

for one year from the date of such order.

(6) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section(3) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication:
Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

(7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.

(8) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of sub-section(1) shall not apply in relation to such establishment for such period as may be specified in the order.

(9) Where permission for retrenchment has been granted under sub-section (3) or where permission for retrenchment is deemed to be granted under, sub-section(4), every workman who is employed in that establishment immediately before the date of application for permission under this section shall be entitled to receive, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.”

The management initiated proceedings under Section 25N after complying with the procedure prescribed in sub-section 1.

The Government initially held that it is not necessary to retrench the workman, since the management themselves had offered to give him alternate employment. That order was ought to be reviewed by resort to proceedings under Section 25N (6), which culminated in granting of approval for retrenchment. This is only continuation of the earlier process initiated by giving notice and retrenchment compensation. Once approval is granted in review of the earlier order as provided in Section 25 N itself, it is not necessary to repeat the very same procedure after the Government granted approval. Therefore, I do not find any merit in the contention of the petitioner and accordingly the writ petition is dismissed.

S.SIRI JAGAN, JUDGE

dvs